

#62 P.2  
5/12/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
Re Patent Application of  
LYNDON J HURLEY  
Serial No.: 10/024,802  
Filed:  
For: DEFLECTION GAUGE DISLODGING SYSTEM

Examiner: Cohen, Amy R  
Group Art Unit: 2859  
Attorney: Ivar M. Kaardal  
Deposit Account No. 11-0020

Honorable Assistant Commissioner for Patents  
Arlington, VA 22313-1450

Sir:

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MAY 07 2003

TECHNOLOGY CENTER 2800

**REQUEST TO WITHDRAW FINALITY OF THE  
REJECTIONS IN OFFICE ACTION**

The rejections of the Office Action mailed April 7, 2003 for the subject patent application have been indicated as being "final" by the Examiner. However, it is submitted that finality of the present Office Action is premature for the reasons set forth below, and therefore withdrawal of the finality of the Office Action is respectfully requested.

With respect to final Office Actions, section 706 of the Manual of Patent Examining Procedure ("MPEP") states generally that (emphasis added):

Before final rejection is in order a clear issue should be developed between the examiner and applicant. To bring the prosecution to as speedy conclusion as possible and at the same time to deal justly by both the applicant and the public, the invention as disclosed and claimed should be thoroughly searched in the first action and the references fully applied; and in reply to this action the applicant should amend with a

view to avoiding all the grounds of rejection and objection. Switching from one subject matter to another in the claims presented by applicant in successive amendments, or from one set of references to another by the examiner in rejecting in successive actions claims of substantially the same subject matter, will alike tend to defeat attaining the goal of reaching a clearly defined issue for an early termination, i.e., either an allowance of the application or a final rejection.

And, in particular, section 706.07(a) of the MPEP states that (emphasis added):

Furthermore, a second or any subsequent action on the merits in any application or patent undergoing reexamination proceedings will not be made final if it includes a rejection, on newly cited art, other than information submitted in an information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p), of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art.

In the present application, the rejections of the claims that were set forth in the previous Office Action have been withdrawn in favor of new rejections based upon newly cited references that were not relied upon or even disclosed in the previous Office Action. However, claim 18 was not amended by the previous Amendment, and the pending Office Action contains a new rejection of claim 18 that relies upon newly cited prior art. It is therefore submitted that the present situation, under the foregoing criteria stated in the MPEP for making rejections final, does not allow the most recent Office Action to be made final.

The undersigned respectfully requests that the finality of the subject Office Action be withdrawn, and an indication of the withdrawal of the finality of the Office Action be issued, either through the issuance of a new non-final Office Action or a supplement to the pending Office Action stating that the finality of

the Office Action has been withdrawn, or in any other manner that the Examiner sees fit to employ, as long as the undersigned is notified in a prompt manner.

Respectfully submitted,



Date: 5/7/03

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To Examiner: Cohen, Amy R.

Group Art 2859

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RE:

Appln. No. 10/024,802

Filing Date: 12/19/01

Applicant: Hurley

Formal Response to Final Office Action

mailed 4/7/03 (Request to withdraw Finality)

Total Number of Pages (Including cover sheet): 4 (Please call us as soon as possible if you do not receive all pages).

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